STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ANGELO BLACKBURN, Minor.

MARLENA DEBELISO,

Petitioner-Appellee,

v

CHRISTOPHER BLACKBURN,

Respondent-Appellant.

UNPUBLISHED
February 14, 2006

No. 262419
Oakland Circuit Court
Family Division
LC No. 04-700101-AD

CHRISTOPHER BLACKBURN,

Plaintiff-Appellant,

v

MARLENA ANNE DEBELISO,

Defendant-Appellee.

No. 263474
Oakland Circuit Court
LC No. 04-701484-DP

Before: Murray, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

In Docket No. 262419, respondent, Christopher Blackburn, appeals as of right from the trial court opinion and order terminating his parental rights to the minor child under MCL 710.39 of the Adoption Code. In Docket No. 263474, Christopher Blackburn was the plaintiff in an action brought under the Paternity Act, MCL 722.711 *et seq.*, and he now appeals by leave granted from the order denying his motion for summary disposition brought under MCL 722.716 and MCR 2.116(C)(10). We affirm in both cases but remand in Docket No. 263474 for the trial court to enter a final order dismissing the action as moot.

The Adoption Case

In Docket No. 262419, petitioner is the minor child's biological mother and respondent is the child's putative father. Petitioner, who was 20 years old, sought to have the minor child placed for adoption through an agency and sought termination of respondent's parental rights

under MCL 710.39. During the pendency of that action, respondent filed the paternity action and sought to consolidate the two cases. The trial court declined to consolidate the two cases, resolved the adoption matter first, and terminated respondent's parental rights to the child.

On appeal, respondent first contends that the trial court developed a different standard than that intended by the Legislature in MCL 710.39(2) when the court determined that the established custodial relationship must be "current" and that respondent was required to "preserve or attempt to preserve" it. Respondent also contends that the court erred in finding that there was not an established custodial relationship between respondent and the minor child. We disagree.

The question whether the trial court developed a different standard than that required by the language of MCL 710.39(2) is a question of statutory interpretation. Statutory interpretation is a question of law that this Court reviews de novo. *In re RFF*, 242 Mich App 188, 198; 617 NW2d 745 (2000). "The primary goal of judicial interpretation of a statute is to ascertain and give effect to the intent of the Legislature." *In re Lang*, 236 Mich App 129, 136; 600 NW2d 646 (1999). "In enacting the Adoption Code, the Legislature sought, inter alia, to establish procedures to safeguard and promote the best interests of the adoptee and to provide for speedy resolution of disputes concerning a putative father's rights where placement of a child for adoption is sought." *Id.*, citing MCL 710.21a.

Upon review of the record, we find sufficient evidence to conclude that there was an established custodial relationship between respondent and the minor child during the three-month period when the child lived with respondent. However, the evidence was undisputed that after September 4, 2004, respondent made no attempt to contact the child and did not have any contact with the child. Thus, at the time of the hearing, the evidence was sufficient to show that there was no established custodial environment between respondent and child. The trial court's holding was consistent with the present-tense language used by the Legislature which reveal an intention that, in order to come within the provisions of § 39(2), the custodial relationship must exist at the time of the hearing. *Lang, supra* at 136. Thus, the trial court did not invent a new standard or err in interpreting § 39(2) when it found that there was no evidence of a current established custodial relationship. This Court reviews the trial court's findings of fact for clear error. *In re Cornet*, 422 Mich 274, 277; 373 NW2d 536 (1985). We find that the trial court did not err when it found that respondent had "not preserved or attempted to preserve" the relationship that had been established during the period between the child's birth and September 4, 2004.

Next, respondent contends that the trial court clearly erred in finding that he did not provide substantial and regular support or care in accordance with his abilities to provide such support or care as required under MCL 710.39(2). We disagree. MCL 710.39(2) provides, in pertinent part, that the court may find that the putative father

> . . . has provided substantial and regular support or care in accordance with the putative father's ability to provide such support or care for the mother during pregnancy or for either mother or child after the child's birth during the 90 days before notice of the hearing was served upon him . . . .

Addressing whether respondent provided support or care for the mother during pregnancy, the court found that respondent was able to provide support to petitioner from March 2004, when she moved into his parents' home with him, to June 7, 2004, when the minor child was born. However, the court found that the evidence of support or care during that period was sparse and less than his ability. We find the trial court did not clearly err in this conclusion. The record shows no evidence that respondent provided anything for petitioner. Everything that respondent and petitioner had during this period, including a home and food, was provided by respondent's parents. Respondent and petitioner paid his parents only for the cable television service. Under *In re Ballard*, 219 Mich App 329, 336; 556 NW2d 196 (1996), the trial court is not permitted to consider alternative care or custody arrangements in determining a child's best interests under MCL 710.22. We find the holding in *Ballard* is applicable under § 39(2).

The first criterion in determining intent is the specific language of the statute. *Lang, supra* at 136. Subsection 39(2) refers specifically to the "putative father" and requires the court to consider what the putative father "has provided . . . in accordance with the putative father's ability to provide such support or care." "The Legislature is presumed to have intended the meaning it plainly expressed, and when the statutory language is clear and unambiguous, judicial construction is neither required nor permitted." *RFF, supra* at 198. The language is clear that the Legislature intended the court to look at only what the putative father has provided. Thus, the trial court did not clearly err in finding that the care provided by respondent during petitioner's pregnancy was sparse and less than his ability.

Respondent also argues that the trial court erred in finding that he did not provide substantial and regular care for "either mother or child after the child's birth during the 90 days before notice of the hearing was served upon him." We disagree. The notice of hearing was served on respondent on November 11, 2004, so the pertinent 90-day period began on August 11, 2004. The trial court found that respondent provided insubstantial support or care in accordance with his abilities between August 11, 2004, and September 4, 2004, when petitioner and the minor child moved out of respondent's parent's home. The court then correctly found it undisputed that from September 4, 2004, to November 11, 2004, respondent provided no support or care.

Respondent argues that the court should have considered only the time period from August 11, 2004, to September 4, 2004, because he was not able to support or care for the minor child after petitioner took the child out of the home and got a PPO against respondent. We find this argument to be without merit. The evidence showed that the PPO forbade respondent to have any contact with petitioner, but it did not prevent him from requesting visitation with the minor child or from sending money for his support. In addition, the statute is clear that the court is to look at the 90-day period that ends on the date that notice of hearing was served on the putative father. Notice was served on November 11, 2004. Thus, the relevant time period is from August 11, 2004, to November 11, 2004. The fact that the baby was not in respondent's home for the major part of that period does not change the time period. *In re Schnell*, 214 Mich App 304, 310; 543 NW2d 11 (1995).

We find the record supports the trial court's conclusion that respondent provided insubstantial support or care in accordance with his ability during the period that the minor child was in his home. Respondent's argument that his situation is analogous to that of a parent who does not pay child support is also without merit. This matter was before the court under the

Adoption Code, which requires the trial court to look at what the putative father has provided within the 90 days before being served notice.

Next, respondent argues that the trial court made improper credibility determinations and ignored credible testimony. Questions regarding the credibility of the witnesses are for the trier of fact. *People v Givans*, 227 Mich App 113, 123-124; 575 NW2d 84 (1997). A finding is clearly erroneous if, after reviewing the entire record, the Court is left with a definite and firm conviction that a mistake has been made. However, this Court will not interfere with the credibility findings of the trial court. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337-338; 445 NW2d 161 (1989). Contrary to respondent's argument, we do not find that the trial court's decision, that respondent did not fall under MCL 710.39(2), was in conflict with the court's credibility findings. The court correctly applied the law in determining that there was not an established custodial relationship and that respondent did not provide substantial and regular support or care under any of the circumstances provided for in the statute. The court considered the credibility of the witnesses and based its decision on the facts and the law. Giving deference to the trial court's factual findings, this Court is not left with a definite and firm conviction that a mistake has been made. *Miller, supra* at 337-338.

Finally, in reliance on *In re Dawson*, 232 Mich App 690; 591 NW2d 433 (1998), respondent contends that the trial court improperly allowed the testimony of the prospective adoptive father. We disagree. The *Dawson* Court held that the trial court must not compare the putative father with the prospective adopting individuals when evaluating the best interests of the child under § 39(1). *Id*. at 698-699. The record and the written opinion and order of the trial court clearly show that no error occurred. The trial court permitted only permissible evidence to be admitted on the record and did not make any impermissible comparison.

The additional arguments raised by respondent were not properly preserved for appeal, and we decline to review them. MCR 7.212(C)(5); *Busch v Holmes*, 256 Mich App 4, 12; 662 NW2d 64 (2003); *Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995).

The Paternity Case

In Docket No. 263474, plaintiff contends that the trial court erred in denying his motion for summary disposition because there was a statutory presumption of paternity based upon a properly conducted genetic test that resulted in a 99.5 percent probability of paternity and because defendant admitted under oath in the adoption case that plaintiff was the biological father. A motion for summary disposition under MCR 2.116(C)(10) is subject to de novo review. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

We find that the trial court did not err in denying summary disposition to defendant because the issue was moot. An issue is moot if an event has occurred that renders it impossible for the court, if it should decide in favor of the party, to grant relief. *City of Warren v Detroit*, 261 Mich App 165, 166 n 1; 680 NW2d 57 (2004); *City of Jackson v Thompson-McCully Co*, 239 Mich App 482, 493; 608 NW2d 531 (2000).

The trial court denied plaintiff's motion for summary disposition on the basis that to grant the motion would be "irreconcilable" with the prior adoption proceeding. We find no question of fact that plaintiff established the presumption of paternity. The results of the genetic test report,

ordered by the court on February 18, 2005, showed a probability of paternity of 99.5 percent. Under the facts and circumstances of this case, paternity is presumed, and either party may move for summary disposition. MCL 722.716(5) and (6). However, plaintiff also sought other relief, including custody, child support, and an order that the child was not available for adoption. Plaintiff has made no showing of any error to cause reversal of the order to terminate his parental rights under the Adoption Code. Thus, we conclude that an event has occurred that renders it impossible for this Court to grant relief. *City of Warren, supra* at 166 n 1.

We find that *Evink v Evink*, 214 Mich App 172; 542 NW2d 328 (1995) and *Wilson v General Motors Corp*, 102 Mich App 476; 301 NW2d 901 (1980), cases relied upon by plaintiff, are distinguishable. Both cases hold, in pertinent part, that the biological parents of a child are obligated to support and maintain that child, absent adoption. *Evink, supra* at 174; *Wilson, supra* at 480. Here, we affirm the trial court's decision in the adoption case. Plaintiff will have no legal obligation to support Angelo.

In Docket No. 262419, we affirm the trial court's order terminating respondent's parental rights under the Adoption Code. In Docket No. 263474, we affirm the trial court's order denying plaintiff's motion for summary disposition in his paternity action but remand and instruct the trial court to dismiss the paternity case on the basis of mootness. MCR 7.216(7).

Affirmed and remanded for entry of an order consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Henry William Saad